IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3886 OF 2005

Sukumar Estates Limited
(now known as Kumar Housing
Corporation Limited) .. Petitioner.

V/s.

Shri Jagdish Tukaram Mulik
& Ors. .. Respondents.

Mr.Birendra Saraf, Mr.Akshay Kishore i/b.ALMT Legal for petitioner.
Mr.Jadhav i/b. Nitin Jamdar for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th NOVEMBER, 2007.

P.C.:

1. This is a petition under Article 227 of the Constitution of India. The order is passed by the Trial Court rejecting the petitioner’s / plaintiff’s application under Order 38 Rule 5 of the Code of Civil Procedure.

2. I have heard Mr.Saraf at length for the petitioner and perused the impugned order. To my mind, no interference is necessary with the conclusion of the Trial Court that the application preferred does not meet the requirements stipulated by Order 38 Rule 5 of the C.P.C. Further, I see no prejudice to the petitioner inasmuch as if the petitioner still has any grievance after the public notice is issued or further rights created in favour of the third party by the defendants and satisfies the Court in terms of the requirements of Order 38 Rule 5, that necessary and other reliefs and directions can always be issued. Rejection of the application on the ground that it is not in terms of Order 38 Rule 5 of the C.P.C. would not prevent the petitioner from filing a fresh application and claim necessary reliefs, including that of attachment before judgement. More than two years having been lapsed after the order was passed, in my view, interest of justice would be subserved if the present petition is dismissed by granting liberty to the petitioner to file a fresh application and such an application if presented be dealt with on its own merits and in accordance with Law and uninfluenced by the rejection of the earlier application.

(S.C.Dharmadhikari, J.)